IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8743 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PUNJABHAI K SOLANKI

Versus

STATE OF GUJARAT

Appearance:

MR JV MEHTA for Petitioner

MR PREMAL JOSHI, AGP for Respondent Nos. 1 & 3

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 27/04/2000

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner, a class IV employee in the office of respondent No. 3, has challenged the termination of his service from the post of Hamal.

2. The petitioner was appointed as a Hamal at a fixed pay for the period from 22.8.1984 to 28.2.1985. The appointment was on adhoc basis and thereafter the

petitioner was employed as a Hamal from 1.12.1986 to 28.2.1987. Thereafter there was a break of just two days and the petitioner was continued from 3.3.1987 to 31.5.1987 and again the petitioner was continued from 1.6.1987 to 29.2.1988. The petitioner was also continued in employment from 1982 onwards without any fixed time limit as per the order at Annexure "E" to the petition. The petitioner's services came to be terminated by the impugned order dated 30.11.1990 at Annexure "F" to the petition on the ground that the Central Government did not grant sanction for continuing the project on which the petitioner was employed as a Hamal being Water Resource Management Centre run by the Government of India.

3. While admitting the petition on 21.12.1990 this Court also granted ad-interim relief staying the implementation and operation of the impugned order dated 30.11.1990 (Annexure "F") and also directing the respondents to allow the petitioner to discharge his duties.

4. The learned counsel for the petitioner submits that the petitioner was initially employed as far back in August, 1984 and in any view of the matter the petitioner is in continuous employment since December, 1986 except for one artificial break of two days in March, 1987. It is, therefore, submitted that the petitioner has acquired quasi-permanent status. The petitioner's services could not have been terminated except on disciplinary grounds. It is further submitted that respondent No. 3 runs a huge campus and establishment where a large number of class IV employees are required to look after the properties and land of the L.D. College of Engineering which has several departments, class rooms, laboratories and workshops. It is further submitted that when the petitioner has been continued in service, albeit pursuant to the interim order of this Court, for 10 years there is good ground for inferring that the petitioner's services are required and that after a passage of about 14 years, the petitioner need not be sent back home. There is no affidavit in reply.

5. There is no affidavit in reply on record. However, Mr Premal Joshi, learned AGP appearing for respondent Nos. 1 and 3 submits that the petitioner was appointed as a Hamal in the Water Resource Management Centre run with the total assistance of the Central Government and that as per the Government Resolution dated 17.3.1987 the staff set-up consisting of Research Assistant, Clerk-cum-Typist and Hamal was sanctioned for

a period of only one year. It is, therefore, submitted that since the Central Government did not grant the permission or the grant for continuing the project, the petitioner's services were not required. Therefore, the impugned order of termination was passed. It is submitted that the petitioner being an adhoc employee had no right to continue in service.

6. Having heard the learned counsel for the parties, it appears that although the sanction or grant of the Water Resource Management Centre may not have been continued by the Central Government, the very fact that the petitioner has been continued in employment for the last more than 10 years and that the respondents have not filed any affidavit in reply nor filed any Civil Application for vacating the interim relief goes to show that the office of respondent No. 3 has enough workload for the post of a Hamal. In this connection, this Court would like to make a reference to the decision of the Hon'ble Supreme Court in case of State of Haryana vs. Piara Singh, AIR 1992 SC 2130 The petitioner has continued in service for the last about 9 years under the interim orders of this Court. In order to strike a just balance between the claims of the petitioner and the administrative exigencies, it would be just and proper to dispose of this petition with the following directions :-

(i) As and when respondent No. 3 requires a Hamal or any other class IV servants for the L.D. College of Engineering and its campus, respondent No. 3 shall consider the petitioner's claim for employment sympathetically .

(ii) Until the petitioner's claim is so considered, the petitioner shall be continued in employment on the same terms and conditions on which the petitioner is presently employed.

(iii) In case the petitioner's services are required to be terminated on any ground other than misconduct, such order shall not be implemented for a period of two weeks from the date of communication.

7. Subject to the aforesaid directions, the petition is disposed of with no order as to costs. Rule is discharged.

April 27, 2000 (M.S. Shah, J.)
sundar/-